



## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R6-ES-2012-0107; FF09E21000 FXES11110900000 234]

### Endangered and Threatened Wildlife and Plants; Request for New Information for the North American Wolverine Species Status Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Request for new information.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), notify the public that we are requesting new information to update the Species Status Assessment (SSA) for the North American Wolverine (*Gulo gulo luscus*) occurring in the contiguous United States to make a final determination whether to list this species under the Endangered Species Act of 1973, as amended (Act). As a result of court action, the wolverine is now proposed for listing as a threatened species under the Act. The Service is updating the 2018 SSA and will reevaluate whether the North American wolverine occurring in the contiguous United States is a distinct population segment and, if so, whether the distinct population segment meets the definition of an endangered or threatened species under the Act. We now request new information regarding the North American wolverine to inform our SSA update and reevaluation under the Act. As directed by the court, the Service is to make a final listing determination by the end of November 2023.

**DATES:** In order to fully consider and incorporate new information, the Service requests submittal of new information by close of business **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Information submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

**ADDRESSES:** *Document availability:* You may obtain copies of the 2013 proposed rule, the 2018 SSA report, and other supporting documents on the internet at <https://ecos.fws.gov/ecp/species/5123> or at <https://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0107 or by mail or email from the Region 1 Ecological Services Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

*Submission of information:* You may submit written information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<https://www.regulations.gov> and search for Docket No. FWS-R6-ES-2012-0107.

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R6-ES-2012-0107, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send new information only by the methods described above. We will post all new information received on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Requested** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Jodi Bush, Deputy Assistant Regional Director, Ecological Services, Region 1, U.S. Fish and Wildlife Service, 911 Northeast 11<sup>th</sup> Avenue, Portland, Oregon 97232; telephone: 503–231–2256; email: [jodi\\_bush@fws.gov](mailto:jodi_bush@fws.gov). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

### *Species Information*

On February 4, 2013, we published a proposed rule to list the distinct population segment (DPS) of wolverine occurring in the contiguous United States as a threatened species under the Act, with a proposed rule under section 4(d) of the Act that outlined the prohibitions considered necessary and advisable for the conservation of the wolverine (78 FR 7864; hereafter referred to as the “2013 proposed rule”). Please refer to the 2013 proposed rule and the 2018 Species Status Assessment (SSA) for the North American Wolverine (*Gulo gulo luscus*) for information about the wolverine’s taxonomy; life history; requirements for habitat, space, and food; densities; status in Canada and Alaska; geographic range delineation complexities; distribution; and habitat relationships and distribution. The SSA report can be found at <https://www.regulations.gov> at Docket No. FWS-R6-ES-2016-0106 or <https://ecos.fws.gov/ecp/species/5123>.

### *Previous Federal Actions*

Please refer to the 2013 proposed rule for a detailed description of Federal actions concerning the wolverine prior to 2013. On October 31, 2013 (78 FR 65248), we reopened the comment period on the 2013 proposed rule. On February 5, 2014 (79 FR 6874), we extended our final determination date and reopened the comment period on the 2013 proposed rule. On August 13, 2014 (79 FR 47522), we withdrew the 2013 proposed rule based on our conclusion that the factors affecting the DPS were not as significant as believed at the time of publication of the proposed rule. That 2014 withdrawal decision was challenged and ultimately vacated by court order in 2016 (*Defenders of Wildlife v. Jewell*, No. 9:14-cv-00246-DLC, Doc108 (D. Mont. April 4, 2016)). Following the court’s decision, on October 18, 2016 (81 FR 71670), we reopened a comment period on the 2013 proposed rule.

On October 13, 2020 (85 FR 64618), the Service again withdrew the 2013 proposed rule to list the DPS of the North American wolverine occurring in the

contiguous United States as a threatened species under the Act. The 2020 withdrawal decision was based on our conclusion that the factors affecting the species as identified in the 2013 proposed rule were not as significant as believed at the time of publication of the proposed rule. We also found that the North American wolverines occurring in the contiguous United States did not qualify as a DPS.

The Center for Biological Diversity and WildEarth Guardians filed lawsuits in the District Court for the District of Montana challenging the Service's 2020 decision to withdraw the proposal to list the North American wolverine DPS. The cases were consolidated, and the State of Idaho's motion to intervene was granted. On February 4, 2022, the Service filed a motion asking the court to voluntarily return (remand) the 2020 withdrawal decision to the Service to allow the Service to reevaluate it; the Service also requested that the withdrawal decision remain in effect pending that reevaluation. On May 26, 2022, the court granted the Service's request for a voluntary remand of the 2020 withdrawal decision, but the court decided to vacate the withdrawal decision. *Ctr. for Biological Diversity v. Haaland*, No. CV 20-181-M-DWM (D. Mont. May 26, 2022).

#### *Current Situation*

The court's action returns the listing process relative to the wolverine to the proposed rule stage. Therefore, the Service notifies the public that the February 4, 2013, proposed rule to list the DPS of wolverine occurring in the contiguous United States as threatened under the Act (78 FR 7864) has been reinstated. For purposes of consultation under section 7 of the Act, the wolverine, as of May 26, 2022, is again a species proposed for listing and subject to conferencing requirements.

#### *Next Steps*

We will be updating the SSA for the North American wolverine to include any new information not available as of the report published on March 1, 2018. We will use the updated SSA as the scientific foundation to aid in our reevaluation of whether the

DPS is valid pursuant to our 1996 DPS policy (61 FR 4722), and if so, whether the DPS meets the definition of an endangered or threatened species under the Act, or whether the species is not warranted for listing. Per the court order, the Service is to make a final listing determination within 18 months of the court's judgment, i.e., on or before November 27, 2023. Any listing determination we make must be made based on the best available information. We invite the public to provide new information that has become available since the March 1, 2018, publication of the SSA to inform our final determination regarding the North American wolverine.

### **Information Requested**

We are seeking information that has become available since March 1, 2018, regarding the wolverine. We will consider information from all interested parties. We are particularly interested in specific information concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to wolverine, and regulations that may be addressing those threats.

(2) the historical and current status, range, distribution, and population size of this species, including the locations of additional populations of wolverine.

(3) the biological or ecological requirements for wolverine, as well as ongoing conservation measures or efforts for the species and its habitat.

(4) Current or planned activities in the areas occupied by wolverine and possible impacts of these activities on this species.

(5) the amount and distribution of wolverine habitat, including den sites.

(6) the impacts of small population size and genetic diversity on the wolverine.

(7) the projected and reasonably likely impacts of climate change on the wolverine and its habitat, including the loss of snowpack and impacts to wolverine denning habitat.

(8) population connectivity between Canada and the lower 48 contiguous States

of the United States and information on differences in regulations governing wolverine management, or wolverine conservation status, in Canada and the lower 48 contiguous States.

Please note that we are not requesting any additional public comments on the proposed listing rule published in 2013 (78 FR 7864). Instead, we are seeking only new information to update the SSA for the North American wolverine that was published on March 1, 2018. If you submitted comments or information on the proposed rule (78 FR 7864) during the initial comment periods from February 4, 2013, to May 6, 2013, from October 31, 2013, to December 2, 2013, from February 5, 2014, to May 6, 2014, or from October 18, 2016, to November 17, 2016, please do not resubmit them. Any such comments have been incorporated as part of the public record of the proposed rule, and we will fully consider them in the preparation of our final determination. Our final determination will take into consideration all written comments and any additional information we received during all comment periods or in response to this document. Our final determination may again be a withdrawal of the 2013 proposed rule; it may be a determination to finalize the 2013 proposed rule; or our final listing determination may differ from the proposed rule. If, after considering all new information, we reaffirm that the wolverine DPS is a listable entity and that it meets the definition of a threatened or endangered species under section 4 of the Act, we may decide it is appropriate to repropose the species for listing. At that time, we would provide an opportunity for public comment on an updated proposed rule.

You may submit new information concerning the update to the status assessment by one of the methods listed in **ADDRESSES**. We request that you send information only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the

website. We will post all hardcopy submissions on <http://www.regulations.gov> as well. If you submit a hardcopy of new information that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Information and materials we receive will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0107. You may obtain copies of the proposed rule and the SSA for the North American Wolverine (*Gulo gulo luscus*) on the internet at <https://www.regulations.gov> at Docket No. FWS-R6-ES-2012-0107 and <https://ecos.fws.gov/ecp/species/5123> or by mail or email from the Region 1 Ecological Services Regional Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that the 2012 docket has documents and other information related to the proposed rule, as well as the comments received and the proposed rule itself, and is also the correct docket for submission of information in response to this document.

#### **Authors**

The primary authors of this document are staff members of the Species Assessment Team, U.S. Fish and Wildlife Service.

#### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

**Stephen Guertin,**

*Acting Director,*

*U.S. Fish and Wildlife Service.*

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